Motorola, Inc. *and* Citizens Advocating the Protection of Privacy *and* Paco Nathan. Cases 16–CA–14661–1 and 16–CA–14661–2

November 12, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On May 7, 1991, Administrative Law Judge Richard J. Linton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Motorola, Inc., Austin, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that in sec. II,A,1, the judge erroneously stated that the Respondent's drug-free policy was implemented no later than early 1990 rather than 1991.

We find, in agreement with the judge, that employee Loyer's efforts to distribute to the Respondent's employees the disputed documents prepared by members of Citizens Advocating the Protection of Privacy (CAPP) constituted appeals to legislators to protect employees' interests as employees and were, therefore, within the scope of the mutual aid or protection clause under *Eastex v. NLRB*, 437 U.S. 556, 563–568 (1978). The documents were part of CAPP's efforts to pass a city ordinance banning mandatory drug testing in the workplace. For this reason, the literature was directly related to the working conditions of the Respondent's employees, who faced the implementation of mandatory drug testing and the possibility of job loss for refusing to be tested. Further, the documents were not, as the Respondent maintains, purely political tracts. The CAPP application included a description of CAPP's views against random drug testing with references to testing by corporations. The postcard messages were not political endorsements but were suggested messages to send to city council in support of the ordinance. As the Court held in *Eastex*, above, such activities come within the scope of the mutual aid or protection clause and are therefore protected under Sec. 7. We thus find, for the reasons set forth by the judge, that the Respondent violated Sec. 8(a)(1) of the Act by prohibiting the distribution of this literature in nonworking areas of its property during nonworking time.

MEMBER OVIATT, concurring.

Were I writing on a clean slate, I would find, contrary to the judge, that the Respondent did not violate Section 8(a)(1) of the Act by prohibiting the distribution of the CAPP literature in nonworking areas of its property during nonworking time. I am, however, bound by the Supreme Court's decision in *Eastex v. NLRB*, 437 U.S. 556 (1978), which compels the result reached by the judge. Accordingly, I concur in the decision to affirm his conclusion that the Respondent violated Section 8(a)(1) in this instance.

Guadalupe Ruiz, Esq., for the General Counsel.
Brian S. Greig, Esq. (Fulbright & Jaworski), of Austin, Texas, for Motorola.
Joseph C. Mota, President (CAPP), of Austin, Texas, for CAPP.
Paco Nathan, of Austin, Texas, for himself.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. As in *Eastex v. NLRB*, 437 U.S. 556 (1978), there are two principal questions here. First, is the Citizens Advocating the Protection of Privacy (CAPP) literature protected that employees sought to distribute on Motorola's property. Rejecting Motorola's contention that the literature is an unprotected excursion into city council politics in Austin, Texas, I find the literature a protected effort by employees to obtain passage of a city ordinance which would regulate Motorola's new policy to random drug-test its Austin employees. Under Motorola's policy, employees refusing to consent to a random drug test will be fired. Second, may Motorola nevertheless enforce its solicitation/distribution rule so as to prohibit the distribution of this CAPP literature on its property. Concluding that it may not do so, I find that Motorola violated 29 U.S.C. § 158(a)(1) on June 5, 1990, when it told employees they could not distribute the literature in nonwork areas during their nonworktime. I order Motorola to cease its unlawful prohibition.

I presided at this hearing in Austin, Texas, on January 15–16, 1991, pursuant to the August 31, 1990[1] complaint issued by the General Counsel of the National Labor Relations Board through the Regional Director for Region 16 of the Board. The complaint is based on charges filed July 13, 1990, in Case 16–CA–14661–1 by Citizens Advocating the Protection of Privacy (CAPP), and August 2, 1990, in Case 16–CA–14661–2 by Paco Nathan, an individual (Nathan), against Motorola, Inc. (Respondent or Motorola).

In the complaint the General Counsel alleges that the Respondent, Motorola, violated Section 8(a)(1) of the Act by restricting employee wearing of CAPP insignia and of a T-shirt bearing a CAPP-related message; by threatening an employee that his open opposition to Motorola's drug-testing policy could and would result in his discharge or damage to his career; and by prohibiting employees from soliciting and/or distributing CAPP-related literature at any time on Motorola's property.

[1] All dates are for 1990 unless otherwise indicated.

By its answer Respondent admits certain factual matters but denies violating the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Motorola, I make the following

FINDINGS OF FACT

I. JURISDICTION

A Delaware corporation, Motorola has two plants in Austin, Texas, where it manufactures high technology products. During the past 12 months, Motorola purchased and received at its Austin facilities goods valued in the amount of $50,000 or more. Motorola received the goods directly from points outside Texas. Respondent Motorola admits, and I find, that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

1. Motorola

Motorola operates two plants in Austin, one on Ed Bluestein Boulevard and the second in the Oak Hill section. (1:69–70; 2:286.)[2] David M. Doolittle is the personnel manager at the Oak Hill facility. Doolittle testified that the Ed Bluestein plant, which has about 3000 employees, opened in the mid-1970s. Oak Hill, which opened in 1986, employs some 2100. (2:286, 343.) The events giving rise to this case occurred at Oak Hill.

As described by Doolittle, in Austin Motorola designs and manufactures integrated circuits for semiconductors—microprocessors. These microprocessors drive personal computers, computerized engine controls in automobiles, cellular telephones, and most communication devices. The size of a thumbnail, a microprocessor (computer chip) contains thousands of circuits. Formed principally through a chemical process, these integrated circuits are manufactured to microscopic tolerances. (2:287, 309–312.)

As one might expect, quality control is important for Motorola's sophisticated manufacturing process. (2:311.) According to Doolittle, Motorola seeks to become the world's premier corporation. (2:323.) To achieve this goal, Motorola must, among other things, superexcel on product quality. Reflective of Motorola's desire for quality excellence is Motorola's participation in the first—1988—competition for America's Malcolm Baldridge National Quality Award created by Public Law 100–107 and signed into law August 20, 1987.[3]

Responsibility for the Malcolm Baldridge Award was assigned to the Department of Commerce. There are three eligibility categories: manufacturing companies, service companies, and small business. Up to two awards may be given in each category each year. As described by Jeremy Main, *How to Win the Baldridge Award*, 121 Fortune 101 (No. 9, Apr. 23, 1990):

> The prize has no monetary value. It's a gold-plated medal encased in a crystal column 14 inches tall. Yet a lot of CEOs would give away whole layers of vice presidents to win the thing.
>
> In the three years since Congress created the Malcolm Baldridge National Quality Award, it has become *the* standard of excellence in U.S. business.

Doolittle testified that Motorola won the award (manufacturing category, presumably) in 1988. (2:311, 340.) Main so states, Fortune, id. at 101, 102.

Doolittle testified that Motorola's quality goal is to reach a standard called ''six sigma,'' a standard meaning essentially zero defects. ''Six sigma,'' Doolittle explained, is a statistical measurement of deviations from the norm. (2:311–313.) An excerpt from Main's Fortune article at 104–108 helps clarify this:

> In 1981, Motorola set itself a goal of reducing defects 90% by 1986. Former chairman Robert Galvin, a quality fanatic, put in the whole panoply of quality improvement techniques—statistical measures, training, employee involvement, emphasis on customer satisfaction, and so forth—and achieved the goal. Motorola got good enough to export its pocket pagers to Japan. In 1987 the company set new targets: a second 90% improvement by 1989 and yet another by 1991.
>
> Motorola announced an even tougher goal for 1992. The watchword is six sigma. Sigma is a statistical symbol, an indicator of variation outside acceptable limits. The higher the sigma number, the less the variation and the better the quality. Right now Motorola, company wide, is operating at a little better than five sigma, or about 300 failures per million. Attaining six sigma means cutting failures to no more than 3.4 per million. If Motorola gets there, you would have to buy one million of its pagers or cellular phones to find three or four that did not work or had a cracked case or some other fault.

Because of its quest for six sigma quality, the health of its employees, its desire to be the world's premier corporation, and other reasons, Motorola established a policy mandating a drug-free workplace. (2:287, 309, 322–323; R. Exh. 2.)[4] Only a summary (R. Exh. 2) of the policy is in evidence. (2:322, 342–343.) Although the record does not disclose when Motorola implemented its drug-free policy, it was no later than early 1990.[5] At some of its locations, but apparently not in Austin, Motorola's contracts with the Department of Defense require Motorola to administer drug tests to some employees. (2:287, 323–324.)

A design engineer at Oak Hill (1:22–23), James C. Nash serves as a project leader, a supervisory position. (2:317–318.) In the timeframe of January–February 1990, Nash attended a meeting (perhaps limited to management, although that is not clear) at which someone from the corporate of-

[2] References to the two-volume transcript of testimony are by volume and page.

[3] 15 U.S.C. § 3711a. Legislative history appears at 2 U.S. Code Cong. & Admin. News 722 (1987.)

[4] Government exhibits are designated as G.C. Exh. Motorola exhibits are designated as R. Exh. The Charging Parties offered no exhibits.

[5] In Motorola's brief, counsel dates the event as early 1990. (Br. at 3.) One document (G.C. Exh. 3) in evidence states that the drug-testing policy was ''extended'' in 1990.

fice[6] discussed the concept of random drug testing. No announcement was made at this exploratory meeting. (1:23–24.)

About June 1 Motorola formally announced that beginning January 1, 1991, it would commence mandatory drug testing of all employees. (1:28, 35; R. Exh. 2.) Jack R. Davis, an engineering manager at Oak Hill, testified that the policy provides for Motorola to select all employees at random over a 3-year period for drug testing. Any employee who refuses to submit, after being warned of the consequences, will be discharged. (1:197.) In late May, Gary Daniels, the manager of Nash's division, unofficially told Nash and a few others that the new policy would be formally announced soon. Doolittle, Nash testified, also was present. (1:27, 35–36.) At this late-May meeting Nash asked what Motorola planned to do in the cities which had ordinances prohibiting mandatory drug testing. Doolittle said Motorola employees at sites in those cities would not be tested. Nash then asked if Motorola would do the drug testing in Austin if Austin had such an ordinance, and Doolittle said no. Finally, Nash asked what Motorola's response would be respecting Motorola employees who supported Austin city council candidates who supported a city ordinance banning random drug testing, and Daniels said that would be fine. (1:38, 61–62, 67–68.) Doolittle does not address this in his testimony, and Daniels did not testify.

The pleadings establish that Motorola, at all material times, has maintained the following rule:

> Employees are not permitted to solicit other employees or to distribute literature during working time for any purpose. Working time does not include breaks or meal time. Employees are not permitted to distribute literature in working areas at any time.

2. CAPP

President of CAPP since its August 1989 creation (1:210, 237), Joseph C. Mota has done much to build the organization internally and to make it viable. (1:212.) Mota identified CAPP's charter and bylaws (R. Exh. 4) which set forth CAPP's purpose and policies in article 2 (1:234):

> Article 2
>
> Purpose and Policies
>
> Section 1. *Purpose*:
>
> Whereas: the Constitution of the United States of America specifically protects the right to privacy of the citizens of this country, and
>
> Whereas: various individuals, governing bodies, and corporations are now attempting to violate the spirit and intent of the Constitution by instituting drug testing without probable cause, and
>
> Whereas: we feel that it is our responsibility and duty as citizens of the United States of America to protect the spirit and intent of the Constitution from abuse and violation,
>
> We join to form this association to work together in opposing the use of drug testing without probable cause by any government or corporate entity.
>
> Section 2. *Policies*:
>
> This association shall present accurate and truthful information to the general public regarding their rights to privacy and the threats to these rights due to various drug testing policies.
>
> This association shall use all available media resources to communicate with the general public as well as those infringing on our rights to privacy.
>
> This association shall use all available legal and ethical political means to further our cause.
>
> This association shall use only contributed resources to accomplish its goals.
>
> This association shall operate as a non-profit entity.
>
> All funds derived from any source shall only be used for the implementation of the association's purpose.
>
> This association shall not support the abuse of drugs.
>
> This association shall promote the establishment of chapters of this association at the local, state, and national level.
>
> This association shall organize and support committees to target, using all legal and ethical means, specific organizations that are violating rights to privacy.
>
> This association shall not discriminate against individuals for reason of their race, religion, or sex.

Membership is open to anyone, Mota testified (1:211, 237), who, as article 3.1 of the charter specifies, is ''interested in supporting the purpose and policies of this association.'' As of June 1, 1990, CAPP had about 60 to 70 members (currently about 100) with about half being employees of Motorola. The original members of CAPP were employees of Texas Instruments (TI), and at one time Mota worked for TI although he now works for another company. (1:216–217, 239.) CAPP actually is formed as an Austin chapter, and has assisted in the formation of a chapter in Phoenix, Arizona. (1:215, 232; R. Exh. 4.) CAPP's charter is unofficial in the sense that it was not issued by the Texas Secretary of State. Thus, CAPP is not chartered by Texas as a nonprofit organization. (1:231.)

As its purpose clause indicates, CAPP opposes random drug testing in the employment context. (1:226–227, 233.) CAPP's primary goal among several, Mota testified, is to obtain passage of an Austin ordinance regulating drug testing. (1:212.)[7] To achieve this primary goal, CAPP members have been active. For example, Mota has participated in radio call-in programs (2:236) and in three press conferences: September 5, 1989, October 31, 1990, and the third in December 1990. (1:220.) Mota and others contact members of the press, the Texas legislature, and Austin's city council. (1:236.)

During the last city council election in Austin, CAPP actively and publicly supported the election of Susan Tomey Frost and the reelection of member Max Nofziger. Frost and Nofziger support an ordinance regulating drug testing.

[6] The corporate office is shown as Schaumburg, Illinois (G.C. Exh. 3), a suburb of Chicago.

[7] According to Mota, who personally is against the use of drugs, CAPP opposes the use of illegal drugs. (1:236.) Still, CAPP believes there are ways other than random drug testing for controlling society's drug problem. (1:222–223.)

(1:216, 218, 223.) The American Civil Liberties Union (ACLU) is allied with CAPP in this effort (1:228), and a representative of the ACLU appeared with Mota at the September 5, 1989 and October 31 press conferences. (1:219–220, 227–228.)

CAPP's proposed city ordinance (G.C. Exh. 5) is in evidence. (1:66–67.) Council Member Nofziger sponsored it before the council (1:102). Motorola introduced over a dozen exhibits (R. Exhs. 5–23) from CAPP's files illustrating CAPP's involvement and activity as a politically active organization. One of the exhibits (R. Exh. 15), a March 21, 1990 multipage request to a private foundation for money to finance a mass mailing project (2:277–278), describes CAPP's history and goals. Because CAPP's proposed ordinance has not generated enough support among Austin city council members, the proposed ordinance has not been brought to a vote and remains stalled. (1:188–189, 228–229.)

CAPP is not a labor organization within the meaning of Section 2(5) of the Act. Thus, James Nash testified that CAPP is not a labor union. (1:54.) Mota testified that CAPP does not hold itself out to be a labor union, although CAPP does not foreclose that as a future option, and has made no effort to be recognized as a bargaining representatives of Motorola's employees. (1:210–211, 253.) CAPP's efforts to date, Mota acknowledges, have been political in nature because CAPP determined that to be the functional mechanism suited for effectively working against random drug testing. (2:254, 284–285.)

B. *The Allegations*

1. Prohibition—May 29 and June 5, 1990

a. *Facts*

Complaint paragraph 10 alleges that commencing about May 29 Motorola, acting through Personnel Manager David M. Doolittle, maintained and enforced the Company's no-solicitation rule (quoted earlier) ''selectively and disparately by prohibiting CAPP related solicitations and distributions while permitting non-CAPP related solicitations and distributions.''

Complaint paragraph 14(a) alleges that about June 5 Doolittle told employees they would ''not be allowed to solicit for and/or distribute CAPP-related literature at any time on Motorola's property.'' Conclusory paragraphs allege that these prohibitions were done ''to discourage employees from engaging in such activities or concerted activities for the purpose of collective bargaining or other mutual aid or protection'' in violation of 29 U.S.C. § 158(a)(1). Motorola denies these allegations.

A design engineer at Motorola, Bruce A. Loyer has worked for the Company over 11 years. When he learned in early May 1990 that Motorola was considering a mandatory drug-testing policy, something Loyer opposes, Loyer joined CAPP. (1:69–71, 98.) Loyer participated in meetings of CAPP's planning committee with others, including Motorola employees James C. Nash, Gaylyn Johnson, Marjorie Bolden, Steve Weintraub, and Paco Nathan. (1:75–76.) Mota describes the planning committee as CAPP's core group of key people who, as involved members, get things done in CAPP. (1:231.)

About Tuesday, May 29, 1990, Loyer testified, Loyer met with Personnel Manager Doolittle and Doolittle's assistant manager, Ginger Byram, to seek permission (1) to post notices on bulletin boards, (2) to erect a table in the cafeteria and there to distribute certain literature, and (3) to have (at the table) suggested messages employees could sign and send to Austin city council members supporting CAPP's proposed ordinances. (1:76–77, 104.)

Doolittle said no respecting the bulletin boards because they are for Motorola business only. Neither could Loyer set up a table, but he could distribute literature in nonwork areas, such as the cafeteria. Because he did not have the literature with him, Loyer suggested that he bring copies to Doolittle to review first to make sure there was nothing objectionable. Doolittle accepted that suggestion. (1:78–79, 105, 125.)

Doolittle's version generally is consistent with Loyer's. Loyer, Doolittle adds, explained that he was a member of CAPP, working for the passage of a city ordinance which would prohibit drug testing, and that CAPP was interested in having employees fill out postcards addressed to the city council encouraging the council to enact the ordinance. (2:292–293.) Byram did not testify.

Before meeting again with Doolittle, Loyer met with CAPP's planning committee concerning what items CAPP wanted to distribute. The committee designated Loyer as the person to carry the literature to Doolittle for approval and to spearhead the distribution campaign. (1:79–80, 99–100.) The morning of June 5 Loyer, in the first of three meetings that day with Doolittle, submitted several papers to Doolittle and Byram. The first set (G.C. Exh. 6) is several pages consisting of a membership application in CAPP ($15 fee),[8] including a CAPP position statement which was on the reverse side of the original, followed by a three-page drug-testing fact sheet arguing against drug testing (but not mentioning CAPP). (1:80, 82–83), 101.)

The third document (G.C. Exh. 7) is headed ''Stop Random Drug Testing!'' It consists of two pages with nine separate samples of suggested postcard messages to be signed by the employee with address) to the Austin city council, for example: ''Austin City Council, I am asking for your vote against random drug testing.'' (1:81, 84, 103.)

The fourth document (R. Exh. 3), a two-page (front and back of one sheet) article from the March 1990 Scientific American undercutting the value of drug testing. (1:102–103.) A fifth item, not offered in evidence, also was submitted. It was a handwritten generic request to Motorola employees to ''join us'' and write to Austin's city council. (1:103–104.)

Byram expressed concern about the $15 membership fee being a solicitation for money in violation of Motorola's policy. Loyer said that part could be deleted from the membership application. Comparing CAPP to a political party such as the Republican Party, Doolittle said he wanted to fax some of the documents to his superiors. He told Loyer he would advise him later of Motorola's position. (1:85, 114.) During the meeting Loyer said he would remove anything

[8] The membership application, aside from space for name, address, and telephone numbers, specifies a $15 membership fee and solicits any additional donation the person cares to make in order to fund CAPP's expenses. Space also is provided where the new member can indicate whether he can help in one or more of half a dozen ways, such as writing letters to ''legislature, city council, newspapers, congress.''

that Motorola found objectionable. (1:110.) CAPP's purpose in wanting to distribute the documents, Loyer testified, was to gain support for (1) CAPP and (2) passage of CAPP's proposed city ordinance regulating drug testing. (1:132.)

The reverse side of the membership application contains CAPP's position statement. After giving CAPP's full name, and printing ''position statement'' in large, bold capitals, ''CAPP'' then asserts that it:

> *Opposes the use of drug testing without probable cause.
>
> *Does not support the use, sale or possession of illegal drugs.
>
> *Proposes the following positive alternatives to drug testing:
>
> > *professional counseling and treatment.
> > *education and awareness programs.
> > *family involvement in support activities.
> > *work with existing community-service organizations.
>
> *Believes urine testing procedures are subject to inevitable inaccuracies, are easily fooled, are a flawed technological quick-fix to deep-rooted social problems, and that corporations are using drug testing as a way to evade the responsibility for helping employees.
>
> *Objects to corporations acting as agents of government without the Constitutional restrictions imposed on the government.
>
> *Believes urine testing damages employees' reputations and careers by establishing a presumption that all employees are guilty until they prove their innocence and regrets the destruction of trust that this presumption entails.
>
> *Believes urine testing attacks a symptom of the drug problem without addressing the causes and does so at the expense of personal liberties.
>
> *Believes the requirement to disclose prescription medications violates reasonable expectations of privacy.
>
> *Believes urine testing sets a dangerous precedent in allowing corporations to intrude into employees' at-home privacy.
>
> *Objects to the diversion of corporate funds from positive approaches and from productive corporate activities, and objects to the DOD-approved transfer of these costs to American taxpayers.
>
> *Believes that urine testing degrades and dehumanizes participants by equating their worth with the content of bodily byproducts and diverts attention from the real issue: can an employee properly perform his job?

Again, Doolittle's version of the June 5 morning meeting (he states it was about 9 a.m. and that Loyer wanted to distribute the literature at lunch) generally is consistent with Loyer's. In the morning meeting Doolittle has himself immediately expressing the view that the membership application was objectionable primarily because it, as described by Loyer, was a political action committee (PAC). He said he would check with his manager and get back to Loyer with a final decision. Doolittle makes no reference to the $15 membership fee or whether Byram addressed that. (2:294–296.) As to the differences, which appear to be minor, I credit Loyer, in part because significant portions of Doolittle's direct testimony were in response to leading questions.

At noon Loyer saw Doolittle obtaining lunch in the cafeteria. Doolittle informed Loyer that Loyer could not distribute any of the literature. They arranged to meet later that afternoon, and around 3 p.m. they met in Doolittle's office. Doolittle advised Loyer that Motorola would not allow any organization to distribute literature on company premises, and if Motorola allowed CAPP to do so Motorola would have to allow other political organizations, such as the Republican Party, to do so, which Motorola would not do. Doolittle said the ban on distributing this literature extended to all of Motorola's property, including the parking lot. Loyer mentioned the United Way. Doolittle said the United Way was an approved exception. (1:85–86, 106–109.)

Doolittle did not specifically say that the Scientific American article (R. Exh. 3) was included in the ban, but Loyer understood the general ban of ''no literature'' to include the Scientific American article since it was one of the documents submitted in the package that morning to Doolittle. (1:107–110.) Loyer never went back to Doolittle with a new package (presumably of documents, such as the Scientific American article and the three-page drug-testing fact sheet, which do not mention CAPP). Loyer testified he felt he had made it clear he would eliminate anything Motorola found objectionable, and Motorola had found everything objectionable. (1:126–127.)

Although not mentioning the cafeteria conversation, Doolittle's version of his afternoon meeting with Loyer on June 5 generally is consistent with Loyer's except for his denial of a critical point. (2:296–299.) According to Doolittle, he confirmed that CAPP's membership application (with CAPP's position statement on the reverse) was a prohibited item as any other political organization literature would be. Doolittle responded similarly respecting the suggested postcard messages. (G.C. Exh. 7.)

According to Doolittle the conversation revolved around the political nature of CAPP and its political materials, and neither the three-page drug-testing fact sheet nor the two-page Scientific American article was mentioned by either him or Loyer and Doolittle never said Loyer could not distribute those. Doolittle denies telling Loyer there was nothing he could distribute. (2:298.) Had Loyer specifically asked to distribute the three-page fact sheet and two-page Scientific American article in the cafeteria, on nonwork time, Doolittle testified that he ''probably'' would have told Loyer he could do so. (2:300.) Actually, Doolittle testified, an employee does not have to obtain approval to distribute items because approval is not part of Motorola's rule. (2:330–331.)

On the critical difference I credit Loyer who testified firmly and persuasively that Doolittle said ''no literature.'' Doolittle's ''probably,'' a hesitant approval for the two non-CAPP items as late as the hearing, indicates that ''probably'' Doolittle and his superiors, in Motorola's internal discussions on June 5, never focused on any distinction among the drug-testing materials, deeming the whole package and each of the separate documents to be CAPP related and therefore tainted as if expressly authored by a political organization.

According to Doolittle, Motorola has found several hundred copies of the three-page fact sheet and the two-page Scientific American article in the workplace, and no one has

been disciplined for distributing those copies. (2:298–299.) He concedes he assumes they were distributed at the point they were found, and claims that he saw some unnamed employees reading the Scientific American article and handing copies from person to person all over the plant. (2:336–337.) Loyer testified that in the 2 weeks after June 5 CAPP members distributed several hundred copies of the two articles on the street outside the plant property. (1:111.)

I do not credit Doolittle's January 1991 hindsight that had Loyer just asked on June 5 Doolittle ''probably'' would have approved the two non-CAPP items. Instead, I find that Doolittle would have said no on the basis they were CAPP-related literature.

The General Counsel alleges and contends Motorola selectively enforces its no-solicitation and no-distribution rule. To a limited extent Motorola concedes that this is so. Briefly, these are the facts. There is evidence that some departments at Oak Hill allow employees to post notices on informal department bulletin boards (as distinguished from company bulletin boards which have glass cases under lock and controlled by the personnel department) concerning various gambling pools (sports, picking the date an expectant mother delivers, and the like), and other solicitations such as garage sales and church bake sales. (1:87–90, 157–159; 2:290.) Personnel Manager Doolittle testified that all such items are removed when brought to his attention and the people counseled that such activity by employees for employees or external organizations violates Motorola's no solicitation policy. (2:290, 316.)

Motorola distinguishes items such as bake sales and football pools from benefits the company provides or sponsors for employees such as tickets to entertainment events, discounts by suppliers of computer-related products, and health care providers (bloodmobile and cholesterol screening) as part of Motorola's wellness program for employees. (2:314–316.) United Way notices are posted in the company's glass case (1:87) and that organization, Doolittle testified (2:317), is the only one authorized by Motorola to solicit money from employees. The witnesses agree that no political organization has ever been allowed to solicit membership, distribute literature, or use the bulletin boards. (1:127, 129; 2:314, 329.) Although a United States Congressman from the Oak Hill district, or his agent, has been on the premises to make an award, Motorola has never permitted a campaign appearance or speech by a politician. (1:137–138; 2:320–321.)

The Board has held that an employer which permits a small number of ''beneficent acts,'' such as the United Way campaign, does not violate Section 8(a)(1) of the Act when such constitute ''narrow exceptions'' to an otherwise valid no-solicitation rule. *Hammary Mfg. Co.*, 265 NLRB 57 fn. 4 (1982).

b. *Analysis and conclusions*

Citing as controlling authority *Eastex v. NLRB*, 437 U.S. 556 (1978), the parties interpret and apply that case differently to the facts here.

In *Eastex* the employer argued that two sections (the second and third) of a union newsletter were unprotected for distribution because they were political in nature and unrelated to any dispute between the employer and its employees concerning an issue within the employer's control. The second section of the newsletter encouraged employees to write their legislators to oppose incorporation of the Texas right-to-work statute into a revised state constitution then under consideration. The third section criticized President Nixon's veto of a bill to increase the Federal minimum wage from $1.60 to $2 per hour, observed that as workers ''we must defeat our enemies and elect our friends,'' and urged employees to register to vote. Affirming the Board and the Fifth Circuit, the Supreme Court held that distribution of the second and third sections of the newsletter is protected under the ''mutual aid or protection clause'' of 29 U.S.C. § 157. 437 U.S. at 570.

Motorola argues that the two items disputed here (the membership application with CAPP's position statement on the reverse side, and the suggested postcard messages to the city council) are unprotected ''purely political tracts,'' citing the Court's discussion, 437 U.S. at 568 fn. 18. Arguing further, Motorola asserts that the two disputed items here are unprotected because they focus on candidates rather than issues, and the purpose, rather than being for mutual aid or protection in the Motorola workplace, was purely to further the political goal of CAPP in society at large. Here, Motorola argues, the object was a political result, and distribution is unprotected. Motorola also contends that the different context is important shows the items here unprotected. In *Eastex* the union sought to generate support for matters that would assist the workers in collective bargaining, whereas here CAPP seeks no collective bargaining.

Citing the Supreme Court's language that employees' appeals to legislators to protect their interests as employees are within the scope of the mutual aid or protection clause, 437 U.S. at 566, and observing that the concerted effort here was directed at protecting Motorola employees from mandatory drug testing by their employer, the General Counsel argues that distribution of the disputed materials here is protected. If anything, the General Counsel asserts, the items here are a clearer case of protected activity than that in *Eastex* because here mandatory drug testing possibly could lead to disciplinary action by Motorola against employees.

Agreeing with the General Counsel, I find distribution of the two disputed items here to be activity protected by the mutual aid or protection clause of 29 U.S.C. § 157. *Eastex*, supra, 437 U.S. at 570.

As the Court structured its analysis in *Eastex*, the remaining inquiry is whether the fact that the distribution takes place on Motorola's property gives rise to a countervailing interest which outweighs the exercise of Section 7 rights in that location. 437 U.S. at 563, 570. Thus, may Motorola prohibit the distribution in nonworking areas of its property during nonworktime.

As we deal here with employees rather than nonemployees seeking access, the first question in this inquiry is whether Motorola has shown that a ban is necessary in order to maintain plant discipline or production. *Eastex*, supra, 437 U.S. at 571. Although Personnel Manager Doolittle describes an emotional exchange between factions supporting and opposing Motorola's drug-testing policy, that meeting (undated) appears to have been at 1 of 20 ''focus group'' discussion sessions which Motorola held at different locations. (2:287, 291.) Doolittle concedes the name-calling at this meeting, promptly controlled by management, did not result in the type of confrontation which Motorola feared could develop between employees holding different opinions on the subject

of drug testing as literature began to be distributed. (2:291, 325–326.) This is all the more significant in light of Doolittle's testimony that Motorola found several hundred copies of the three-page fact sheet and the two-page Scientific American article on the premises in June (2:298–299), and saw unnamed employees reading and passing copies of the latter. (2:336–337.) In short, Motorola has failed to demonstrate that a ban is necessary to maintain plant discipline or production.

The second question here, as discussed in *Eastex*, 437 U.S. 556 at 573–574, is whether the two disputed items here, although within the general category of protected literature, fall into a subcategory of literature that is unprotected because it deals with matters ''so removed from the central concerns of the Act as to justify application of a different rule than'' that of *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). The Court noted that the Board does not distinguish among subcategories of protected literature. 437 U.S. at 574.

Having found that distribution of the two disputed items is a protected activity, and that Motorola has not shown that a ban is necessary to maintain plant discipline or production, I now find that Motorola violated 29 U.S.C. § 158(a)(1) on June 5, 1990, when Personnel Manager Doolittle told Motorola employee Bruce A. Loyer he could not solicit for CAPP or distribute CAPP-related literature at any time on Motorola's property. Complaint paragraph 14(a).

I shall dismiss the allegation, complaint paragraph 10, that on May 29, 1990, Motorola, through Doolittle, disparately enforced its solicitation/distribution rule. As Motorola allows only a narrow exception for a small number of ''beneficent acts,'' such as the United Way campaign, the allegation of disparate enforcement has no merit.

2. T-shirts—May 30–31, 1990

a. *Facts*

Complaint paragraph 11 alleges that about May 30 Motorola, acting through Jim Johnson, a security guard, told an employee that the employee could not wear a T-shirt bearing a CAPP-related message.

Complaint paragraph 12 alleges that about May 31 Motorola, acting through Assistant Personnel Manager Ginger Byram, told an employee that the T-shirt described above was ''an affront to customers'' and that the employee would not be allowed to wear it. Motorola denies these allegations.

About May 30 design engineer Bruce A. Loyer and senior software engineer, Paco Nathan (a charging party) each wore a T-shirt to work.[9] The T-shirts displayed the slogan,[10] ''Just Say No to Drug Testing.'' (1:92, 145–146.) As with most companies having large plants, Motorola employs a security force. Aside from any other stations the guards may have there, at Oak Hill Motorola assigns a security guard at the front entrance. (2:300.) Jim Johnson is such a guard. (2:339.) On May 30, and during the relevant time, Jim Johnson was the security guard on duty at Oak Hill's front entrance. (1:147.) When Loyer came to work that morning wearing the T-shirt, the security guard[11] told Loyer he could not enter the building wearing the T-shirt. (1:92.)

When Loyer asked for clarification, the security guard referred him to ''Vern,'' the chief of security. Going to the security office, Loyer spoke with ''Vern'' who told Loyer that he had been told by Doolittle not to allow in the plant anyone wearing T-shirts bearing slogans related to drug testing. Vern showed Loyer an entry on the security log to that effect. Vern said Loyer would need to talk to Doolittle, but as of that time Loyer could not enter wearing the T-shirt. Loyer left and changed before returning. (1:92–93, 129–132.)

It is unclear whether Nathan wore his T-shirt to work that day or put it on after his arrival. (1:145–146.) In any event, as he walked by guard Jim Johnson that afternoon,[12] Johnson told Nathan he could not wear the T-shirt in the building and would have to leave the building per an order from Doolittle. Johnson suggested that Nathan bring the T-shirt in a briefcase the next day and get a ruling from personnel. (1:147–148, 166–167.)

The following day, about May 31, Nathan, meeting Ginger Byram in a hallway near the personnel office,[13] showed her the T-shirt, and asked if it was Motorola policy that he could not wear it. True, said Byram, and the shirt was a direct affront to customers. A crowd gathered and a manager even joined the rather spirited debate (during which Nathan said he was a member of CAPP) on Nathan's side. Byram said Nathan could appeal to Doolittle. (1:148–150, 153, 170.)

That morning, Doolittle testified, he was at a downtown meeting. Byram telephoned him and reported that the previous day the security guard had told Nathan he would not be allowed back in the building wearing the ''Just Say No to Drug Testing'' T-shirt. Returning to the plant, Doolittle first called in Loyer, then Nathan, apologized to each, explained that the guard was mistaken, and stated that each was free to wear the T-shirt and to discuss the drug-testing issue in accordance with Motorola's solicitation/distribution policy. (2:303–307.) According to Doolittle, the mistake apparently originated from instructions given to the security department pertaining to a rumored T-shirt slogan of ''Just Say No to Management.'' Security was to call personnel so a personnel representative could come talk with the employee. Motorola would be concerned about that slogan because many of Motorola's customers have representatives on the premises, in hallways, offices, and the entrance foyer, and such a slogan would cause concern among customers. Doolittle denies telling security to turn away any employee wearing a ''Just Say No to Drug Testing'' slogan. (2:301–302, 337–338.)

Loyer's brief version of his meeting with Doolittle is consistent with Doolittle's version. (1:118–119, 130.) Earlier Loyer had told other employees of the guard's restriction. He now told those employees of Doolittle's correction and apol-

[9] The sequence possibly began on May 29. The evidence is not entirely clear. Any slight difference in the actual dates is immaterial.

[10] Although Nathan does not describe the slogan on his T-shirt, that information is supplied by Doolittle. (2:303.) As evidence is to be considered from ''whatever source'' in the record, that consideration is not limited to what a party (the General Counsel here) introduces during its case-in-chief. *Golden Flake Snack Foods*, 297 NLRB 594 fn. 2 (1990).

[11] Apparently Jim Johnson, although Loyer does not give the guard's name. Johnson did not testify.

[12] A question exists whether Nathan was on his way to another part of the building or was actually leaving for the day. (1:166.) I need not resolve that immaterial issue.

[13] Assistant Personnel Manager Byram is alleged in the complaint to be a statutory supervisor and agent. Motorola's answer makes no denial as to Byram.

ogy. (1:132–133, 138.) Loyer has worn the T-shirt after this with no problem. (1:119; 2:305.)

Nathan reports that Doolittle, although saying he could wear the T-shirt, also said that wearing it could cause a disruption since Nathan was openly opposed to Motorola's policy. In some circumstances, said Doolittle, wearing the T-shirt could be cause for discipline. Doolittle refused Nathan's request to put that in writing. (1:152, 168, 172–173.) As Loyer, Nathan told his friends what Doolittle had said about now being able to wear the T-shirt. (1:150, 172–173.) Doolittle testified that Nathan has since worn the T-shirt with no problem. (2:305.)

Doolittle asserts that he told Nathan (and Loyer as well) that drug testing was an emotional issue, but that Motorola respected the right of its employees to discuss their opinions. He told Nathan that Motorola was concerned that because both sides of the issue had support, Motorola was apprehensive about potential conflicts. (2:307.) Doolittle's version is consistent with Nathan's. To the event there are differences, I credit Nathan.

In about late June Bob Galvin, the former CEO (chief executive officer) of Motorola who was serving in a capacity for Motorola not identified in the record, visited Austin and spoke with about a dozen employees, most of whom were opposed to the drug-testing policy. Galvin took notes of their complaints and promised to respond later. He did so by a two-page memo (G.C. Exh. 3), on corporate memo stationary, dated July 25, 1990. (1:39–43.) In his memo, in which Galvin addresses at least nine specific objections, Galvin addresses the T-shirt episode in these words:

> Objection: The button and tee-shirt have been banned in some places.
>
> We have not banned the button or the tee-shirt, and will not so long as they are in good taste and do not disrupt normal operations or cause customer problems. Initially, two people were sent home to change their shirts because of a misunderstanding, but that has since been rectified and employees continue to wear both shirts and buttons.

The General Counsel alleges and argues that the security guard, Jim Johnson, is a statutory agent of Motorola. In turn, Motorola denies the allegation and argues the contrary. The General Counsel relies on evidence showing that the uniformed security guard checks identification badges (and can exclude from the building anyone not having proper identification), inspects briefcases for improper items entering or leaving (1:93, 146), enforces the dress code (denied by Doolittle, 2:339), and similar acts. Motorola relies on the absence of any evidence that management authorized the security guards to turn away anyone wearing the T-shirt in issue or that Motorola thereafter ratified or condoned the action. Even if there was a violation, Motorola argues, it was repudiated timely and effectively.

Doolittle confirms that the security guards have the duty to check identification and are authorized to prohibit anyone from entering the plant who does not have a proper Motorola badge. Although the guards are authorized to tell employees to comply with Motorola's dress code, the guards, Doolittle claims, do not enforce the code. Instead, the guard should stop the individual, call the supervisor, and have the supervisor come talk to the employee. Guard Jim Johnson was never authorized to turn away anyone wearing the T-shirt in question. (2:306, 339–340.) Nevertheless, Loyer testified that the guards have enforced the dress code against him, turning him away on a weekend when he was wearing shorts. (1:93.) Doolittle confirms that the dress code bans shorts. (2:339.)

b. *Analysis and conclusions*

I find that Motorola clothed security guard Jim Johnson with apparent authority to enforce Motorola's dress code, that this apparent authority extended to matters such as shorts and T-shirts, and that about May 30, 1990, the apparent authority included the authority to turn individuals away who were wearing T-shirts bearing the slogan, ''Just Say No to Drug Testing.'' Employees had a protected right to wear the T-shirts, a matter Motorola concedes.

Motorola contends that, in any event, its officials timely and effectively repudiated the security guard's actions in accordance with the standard enunciated in *Passavant Memorial Hospital*, 237 NLRB 138 at 138–139 (1978). I find that Motorola's ''repudiation'' falls short of the *Passavant* standard. First, it was not unambiguous, as both the testimony of Nathan shows and the July 25 statement of former CEO Galvin reflects. Second, even if Doolittle's apology and accompanying remarks to Loyer and Nathan, plus their reports to their friends, constitute the required publication of correction, there were no unambiguous assurances to employees that no interference with their Section 7 rights would occur in the future. Finally, as we see in the following sections, Motorola committed further illegal acts. Thus, Motorola has not satisfied the *Passavant* standard. *Concord Metal*, 295 NLRB 912 (1989). In these circumstances, I find that Motorola violated 29 U.S.C. § 158(a)(1), as alleged, by the May 30, 1990 statements of security guard Jim Johnson to employees Loyer and Nathan and the similar may-not-wear statement by Assistant Personnel Manager Byram about May 31, 1990.

3. Jack R. Davis—June 1, 1990

a. *Facts*

Complaint paragraph 13(a) alleges that about June 1, 1990, Motorola, acting through Supervisor Jack Davis, told an employee [Nathan] that his position against drug testing could lead to his dismissal. On the same date, paragraph 13(b) alleges, Davis told an employee [Nathan] that his open opposition to Motorola's drug-testing policy would have a negative effect on his career. Conclusory paragraphs allege that Motorola violated Section 8(a)(1) of the Act by these alleged statements of Davis. Motorola denies all these allegations.

Around June 1 Senior Engineering Manager Jack R. Davis supervised about 16 employees, including Paco Nathan. (1:154, 196, 208.) Nathan testified that on June 1 Davis, who the day before had returned from visiting a customer outside the country, came to his work cubicle around lunchtime. Davis, Nathan testified, asked if Nathan understood that refusal to take a drug test would eventually lead to Nathan's dismissal from Motorola. Nathan said yes. Davis then said that Nathan's open opposition to corporate policy would have a negative effect on Nathan's career. Nathan testified he was frightened by this and does not remember any reply

other than he said he understood what Davis was saying. (1:154–156.)

Davis denies the dismissal and negative impact statements which Nathan attributes to him. (1:197–198.) According to Davis, a few days before June 1 an *employee*, who sat fairly close to Nathan, complained more than once to Davis that employees were gathering in Nathan's work station to discuss Motorola's drug-testing policy and that such conversations and the associated waste of companytime were disturbing the employee. Davis even observed this himself a couple of times. Davis then went to Nathan about the disruption of the work environment and asked him to have these meetings away from the work area and on his own time. Nathan agreed. (1:199–200, 205.) However, on cross-examination Davis testified that two persons, and only two, complained—one a manager and the other a supervisor. (1:206–207.)

Nathan agrees that Davis did complain that he was causing a disturbance and being disruptive, but asserts Davis said it was because other employees did not want to be associated with Nathan. Nathan places this conversation on June 6, after a conversation which he had on June 5 with Doolittle. (1:183–184, 186.) I find that the conversation Davis describes, regardless of some differences between his version and that of Nathan, occurred on June 6. Disbelieving the denials of Davis, I also find that he made the June 1 dismissal and negative effect statements which Nathan attributes to him. Indeed, on either June 1 or 6, Nathan is not sure which, Davis suggested that Nathan should stop discussing the drug-testing subject because employees are tired of hearing about it. (1:186–187.)

b. *Analysis and conclusions*

Respecting the dismissal allegation (complaint par. 13a), Motorola argues that it should be dismissed even if Nathan is credited, for the credited statement merely restates the consequences of a refusal to submit to a random drug test under Motorola's drug-testing policy (and the Government does not attack Motorola's drug-testing policy). Nathan's own version, as I have found, simply is his acknowledgement to Davis that Nathan understands the consequences of any refusal. Davis was therefore not attacking Nathan's opinion, but merely clarifying that Nathan understood the consequences if he actually refused to submit to a drug test.[14] Agreeing with Motorola, I shall dismiss complaint paragraph 13(a).

By contrast, Davis' negative effect statement is just the opposite—it threatens Nathan's career because of Nathan's *position* opposing Motorola's drug-testing plan. When Davis made that June 1 threat (complaint par. 13b), Motorola violated 29 U.S.C. § 158(a)(1). I so find.

4. David M. Doolittle—June 5, 1990

a. *Facts*

Complaint paragraph 14(b) alleges that about June 5, 1990, Motorola, acting through Personnel Manager David M. Doolittle, told an employee (Nathan) that his open opposition to Motorola's drug policy was disruptive and that if he did not desist from such activity it would lead to consequences, including possible job loss. Conclusory paragraphs allege this conduct to be violative of Section 8(a)(1) of the Act. Motorola denies these allegations.

Paco Nathan testified that about June 5 Doolittle called him into his office after lunch. Saying he understood there was going to be another CAPP meeting at the afternoon coffeebreak, Doolittle told Nathan there could be no such meeting or distribution of (CAPP) literature. Doolittle said that Motorola does not permit the Republican Party to come in and distribute, and neither may CAPP. Doolittle declined Nathan's request to put that in writing. Nathan testified that the gathering, although planned, did not take place. (1:156, 182–183.)

Doolittle also said, Nathan testified, that Nathan was being disruptive and that Nathan's open opposition to Motorola would have negative consequences, including possible loss of his job. Feeling threatened by that, Nathan asked Doolittle to put his statement in writing. Doolittle declined the request. (1:157.)

According to Doolittle, he has never attempted to persuade Nathan that he should change his position on the drug-testing issue. (2:308.) In an apparent confusion of this event with his June 5 conversation with Bruce Loyer, Doolittle testified (in response to a question by counsel) that he did not tell Loyer that his opposition to Motorola's drug-testing policy could lead to loss of his job, nor did he tell Loyer that his open opposition to the policy was disruptive. (2:300.) Loyer never testified to that effect, but Nathan did. Although treating Doolittle's denial as going to Nathan's description of their June 5 meeting, I credit Nathan who testified persuasively on this point.

b. *Conclusion*

Having credited Paco Nathan's version over Doolittle's denial, I find, as alleged in complaint paragraph 14(b), that on June 5, 1990, Personnel Manager Doolittle threatened Nathan with possible discharge if he did not cease his disruptive opposition to Motorola's drug-testing policy. I further find that by Doolittle's economic threat, Motorola violated 29 U.S.C. § 158(a)(1).

CONCLUSION OF LAW

By various acts prohibiting and restricting employees from engaging in protected activity at its Oak Hill facility in Austin, Texas, from May 30 to June 5, 1990, and in threatening their careers or jobs if they persisted in their protected activities, Respondent Motorola has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[14] Nathan testified that if it came his time to take the test, he would sign the consent form, ''Signed under duress'' as Motorola's CEO has authorized. 1:176. Galvin's July 25 responses (G.C. Exh. 3) states that the consent form will not assert that the consent is ''voluntary,'' but Galvin says nothing about signing ''under duress.''

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Motorola, Inc., Austin, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist

(a) Telling employees that they may not enter its Oak Hill facility in Austin, Texas, wearing T-shirts bearing the slogan, ''Just Say No to Drug Testing.''

(b) Telling employees that the above T-shirt slogan is an affront to Motorola's customers and therefore the employees may not wear such a T-shirt on Motorola's property.

(c) Telling employees that their open opposition to Motorola's drug-testing policy will have a negative effect on their careers at Motorola.

(d) Telling employees that they will not be allowed to solicit for and/or distribute CAPP-related literature at any time on Motorola property.

(e) Telling employees that their open opposition to Motorola's drug-testing policy is disruptive and that if they do not desist from such activity it will lead to consequences including possible discharge.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Austin, Texas, copies of the attached notice marked Appendix.[16] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that complaint paragraphs 10 and 13(a) are dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT do anything to interfere with these rights.

WE WILL NOT tell you that you may not enter our Oak Hill facility in Austin, Texas, wearing T-shirts bearing the slogan, ''Just Say No to Drug Testing.''

WE WILL NOT tell you that the above T-shirt slogan is an affront to our customers and therefore you may not wear such a T-shirt on our property.

WE WILL NOT tell you that your open opposition to our drug-testing policy will have a negative effect on your career at Motorola.

WE WILL NOT tell you that you will not be allowed to solicit for and/or distribute CAPP-related literature at any time on our property.

WE WILL NOT tell you that your opposition to our drug-testing policy is disruptive and that if you do not stop such activity it will lead to consequences including possible discharge.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

MOTOROLA, INC.

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[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''